

224

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 10/82

BEFORE: THE HON. MR. JUSTICE KERR, J.A.  
THE HON. MR. JUSTICE ROWE, J.A.  
THE HON. MR. JUSTICE WRIGHT, J.A. (AG.)

IN THE MATTER OF AN APPLICATION  
FOR LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL - PURSUANT TO SECTION  
35 OF THE JUDICATURE (APPELLATE  
JURISDICTION) ACT.

PETER HARRISON

VS.

THE QUEEN

Mr. Delano Harrison and Mr. A. J. Hutchinson for the applicant.

Mr. F. A. Smith for the Crown.

May, 19, 1982;

KERR, J.A.:

On May 19, 1982, this application was refused and we then promised to put our reasons in writing. Regrettably and perhaps because reasons are not usually reserved in applications of this nature the matter was overlooked and attention but recently adverted to this hitherto unfulfilled promise.

The applicant, a Corporal of Police, was convicted in the Resident Magistrate's Court on an indictment which charged him with bribery contrary to Section 4 of the Corruption Prevention Act for that he on the 21st November, 1980 in the parish of St. Catherine obtained from Marion Tulloch, the sum of \$300 as a gratification for showing favour in the exercise of his official functions to Ralston Morgan and Lambert Morgan who were charged with a breach of the Dangerous Drugs Law, namely cultivating ganja.

The Court (Carberry, Carey, White, JJ. A.) in dismissing his appeal against conviction held that it could not disagree with the

learned Resident Magistrate who expressed himself as being impressed by the witness Marion Tulloch and with respect to defence Attorney's submission that Tulloch had an interest to serve and therefore her evidence required corroboration, the Court was of the view that there was ample corroboration of her evidence.

The questions formulated as involving points of law of exceptional public importance and meriting a further appeal to Her Majesty in Council were:

- "1. In a trial without a jury is it incumbent on the Tribunal to demonstrate that the status of a witness as an accomplice or non, or such as has an interest to serve has been considered?
2. Would the position be any different when there is a positive statutory requirement for the Tribunal to record his "findings of fact"?
3. If the answer to 1 or 2 is the affirmative, would the failure of the Tribunal so to do, effect a substantial miscarriage of Justice.

Section 191 of the Judicature (Resident Magistrate's) Act

so far as is relevant reads:

"Where any person charged before a Court with any offence specified by the Minister, by order, to be and offence to which this paragraph shall apply, is found guilty of such an offence, the Magistrate shall record or cause to be recorded in the notes of evidence, a statement in summary form of his findings of fact on which the verdict of guilty is founded".

The learned Resident Magistrate did in fact set out his findings of fact upon which he based his verdict as required by Section 291 of the Judicature (Resident Magistrates) Act. However, with respect to his omission to categorically state that the witness Tulloch was an accomplice it was clear from the notes that he was addressed on this aspect of the matter by Attorneys appearing for the applicant in a no case submission and, therefore, he could not have failed to appreciate the position of the witness Tulloch and to approach her evidence with the care and caution required in relation to the evidence of an accomplice - See R. v. Malek and Reyes (1966)

9 J. L. R. at p. 563.

Accordingly, in the light of the judgment of the Court of

726

Appeal the questions as formulated would be merely of academic interest and could in no way affect the verdict.

However, were it necessary to decide the general question as to whether the provisions of Section 291 of the Judicature (Resident Magistrates) Act were mandatory or directory, we would adopt the approach of this Court in the Cayman Islands Appeals Nos. 2 and 7/80 Farrington v. Brandon (unreported) delivered the 12th of August, 1980 at pp. 8-9 and hold that notwithstanding the language of the section the provisions are not mandatory but directory because to hold that the verdict would be invalid for failure to obey the provisions would work serious inconvenience or injustice to persons who would have no control over the proceedings. It would mean that an appeal against conviction otherwise devoid of merit must be allowed if for some reason a Resident Magistrate omitted to record his findings of facts.

Accordingly, the following observations in R. v. Leroy Sawyers (Resident Magistrate's Criminal Appeal - 74/80) - to which reference was made by the applicants Attorney:-

"Unless the resident magistrates faithfully abide by the provisions of Section 291 of the Judicature Resident Magistrate's Act and set out what are their findings of fact neither the persons who have been convicted nor the Appeal Court, if the matters reach the Appeal Court, can understand fully why the resident magistrate came to the particular verdict," indicate no more than the probability of a problem arising from failure on the part of the Resident Magistrate to comply with the provisions of the act and the desirability for compliance.

For these reasons the application for leave to appeal to Her Majesty in Council was refused.